

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
the Citizens Committee to Save Our)
Public Lands for Review of Order)
No. 76-174 of the California)
Regional Water Quality Control)
Board, North Coast Region.)
File No. A-153)

Order No. WQ 77-9

BY BOARD MEMBER AUER:

On August 26, 1976, the California Regional Water Quality Control Board, North Coast Region (Regional Board), adopted Order No. 76-174, providing waste discharge requirements for the Louisiana Pacific Corporation (Corporation) for logging and associated activities to be conducted adjacent to the Middle Fork of the Eel River in Trinity County.

On September 27, 1976, the State Water Resources Control Board (State Board) received a petition for review of Order No. 76-174 filed by the Citizens Committee to Save Our Public Lands (petitioner) and on March 29, 1977, the State Board held a hearing for the purpose of receiving evidence relative to the issues raised by the petition.

I. BACKGROUND

The Corporation has a renewable option to harvest timber on land owned by Richard Wilson and plans to harvest between three to four hundred acres of timber adjacent to the Middle Fork of the Eel River. The Timber Harvest Plan (THP 1-76-62T) was approved by the Division of Forestry on

February 10, 1976, despite the nonconcurrence of the representatives of the California Department of Fish and Game and the Regional Board.

The following findings contained in Order No. 76-174 characterize the physical setting and identify salient environmental considerations:

- "8. Louisiana-Pacific Corporation, in order to gain access ... is in the process of obtaining a road right-of-way across land under the stewardship of the U.S. Department of Interior, Bureau of Land Management (BLM). This right-of-way request is BLM application no. CA 3051. For the purposes of these Waste Discharge Requirements, all logging activities conducted pursuant to THP 1-76-62T, including those associated with road construction, operation and maintenance of access across land under BLM stewardship (CA 3051), are to be covered by this Order.

- "11. The proposed logging operation is adjacent to the Middle Fork Eel River in a mixed conifer forest of Douglas fir, White fir, Ponderosa pine, and Sugar pine along with smaller stands of hardwoods. A significant portion of the area proposed for logging or road construction is on steep slopes underlain by thin, highly erosive soils, with numerous active and dormant slumps, slides, and other types of earth movement. Average 24 hours rainfall in a storm with a recurrence interval of 25 years is approximately 9.0 inches. The large scale harvesting of commercial timber and construction of roads in the unstable areas severely threaten to remove the cohesive force of tree roots and to destabilize the already unstable slopes. If the logging operation activates or accelerates further movement of the unstable slopes, then increased siltation of the Middle Fork Eel River and the Henthorne Lakes would be expected to occur, deleteriously affecting the beneficial uses of Henthorne Lakes and the Middle Fork Eel River.

- "12. The Middle Fork Eel River, which is adjacent to this logging operation, was designated for protection in 1972 in SB 107, the Wild and Scenic Rivers Act. This Act requires that the designated rivers and their immediate environment are to be preserved in their free-flowing state for the benefit and enjoyment of the people of the State of California (Section 5093.30).
- "13. The beneficial uses of the Middle Fork Eel River and its tributaries are:
- a. agricultural supply
 - b. industrial service supply
 - c. groundwater recharge
 - d. water contact recreation
 - e. non-contact water recreation
 - f. cold freshwater habitat
 - g. wildlife habitat
 - h. preservation of rare and endangered species
 - i. fish migration
 - j. fish spawning
- "14. Of particular importance is a unique summer steelhead population of the Middle Fork Eel River which presently accounts for approximately two-thirds of the State of California's extraordinary resource.
- "15. The beneficial uses of Henthron Lakes include:
- a. water contact recreation
 - b. non-contact water recreation
 - c. cold freshwater habitat
 - d. wildlife habitat
- "16. This operation is within an extensive de facto wilderness area and within one-half mile of the Yolla Bolla-Middle Fork Eel River Wilderness Area. Castle Peaks, a roadless area, is one-quarter mile south of this operation."

II. CONTENTIONS

The petition raised the following contentions:

--Order No. 76-174 contains at least three discharge

specifications which cannot be met.^{1/}

- Order No. 76-174 does not provide waste discharge requirements for the North Fork of the Eel River.
- The Regional Board did not adequately consider the long range threats to water quality which could result from the proposed logging activity on the Middle Fork of the Eel River.
- The Regional Board did not adequately consider the possible cumulative effects of the proposed logging activity with the effects of the 1975 logging and road building on the Richard Wilson property on the east (other) bank of the Middle Fork of the Eel River.
- The Order is not sufficient to protect that portion of the Eel River designated for protection by the California Wild and Scenic Rivers Act^{2/} in conformity with the Act.

1. A. DISCHARGE SPECIFICATIONS

1. Discharge from the subject property shall not cause the turbidity of the Middle Fork Eel River or its tributaries or Henthorne Lakes or its tributaries to be increased more than 20 percent above naturally-occurring background levels.
2. Discharge from the subject property shall not cause the suspended sediment of the Middle Fork Eel River to be increased more than 10 percent above naturally occurring background levels.

6. Discharge from the subject property shall not cause diminution of the habitat or population density of the Middle Fork Eel River's aquatic biota.

2. Section 5093.50, et seq, Public Resources Code.

III. FINDINGS

During the course of the hearing, it became apparent that new information was available both from the petitioner and the company which was not presented to the Regional Board when it adopted Order No. 76-174. In addition, it was indicated that an updated geologic report would soon be made available to the Regional Board. This report is required by Provision 7 of the Order No. 76-174 which reads:

"Commencement of specific operations prior to submittal and approval of appropriate materials noted by the discharger in Finding 10g, h, i and j shall be considered a violation of this Order."

Findings 10g and i in turn provide:

"g. We (Louisiana-Pacific) will have Moore and Taber (geological firm) prepare an updated geologic report. This will delineate any sensitive areas and also cover the road above Henthorne Lakes and the ill-defined mud slide area Before commencement of operations, this report will be submitted to your office and all roads flagged for staff inspections of final locations." (Emphasis added)

* * *

"i. The Moore and Taber report will address such special zones and show the location of areas where rubber tired skidders will be used in harvesting operations. These special skid road will be flagged for on-ground inspections. In areas noted by Dr. Janda as being especially sensitive, helicopter logging will be employed." (Emphasis added)

While the Regional Board is to be commended for utilizing this innovative mechanism, it became evident during the hearing that some means for identifying "sensitive areas" and "special zones" should have been included in Order No. 76-174. A related subject of dispute requiring clarification is whether Findings 10 g and i require the Corporation to submit its studies in one

report or in a series of reports which may be followed by increments of road construction and timber harvesting.

Because new information is available and further information will become available in the near future, which neither the Regional Board nor State Board has had an opportunity to consider, we believe this matter should be remanded to the Regional Board for reconsideration and clarification of the waste discharge requirements. We note, in addition, that subsequent to the adoption of Order No. 76-174 by the Regional Board the State Board adopted Order No. WQ 77-1 which provides additional guidance to the regional boards in matters of this nature.

Finally, with regard to the petitioner's contention that the requirements should be written to cover the North Fork of the Eel River as well as the Middle Fork, (Contention Number 2, above) we have the following comments. While most areas of concern lie within the watershed of the Middle Fork of the Eel River, a portion of the access road across BLM land dips within the watershed of the North Fork of the Eel River. When examining the operative provisions of Order No. 76-174, it is readily apparent that they were drafted with the Middle Fork of the Eel River principally, if not solely, in mind. During the opening stages of the hearing, counsel for the Regional Board stipulated that in preparing Order No. 76-174 the North Fork of the Eel River had been overlooked. We find that Order No. 76-174 should include appropriate waste discharge requirements applicable to the North Fork of the Eel River.

Our finding that this matter should be reconsidered by the Regional Board should not be taken as an expression by the State Board on the merits of any of the petitioner's contentions, except Contention Number 2, as discussed above.

IV. PROTECTION OF THE AREA
INVOLVED PENDING RECONSIDERATION
BY THE REGIONAL BOARD

Since the adoption of Order No. 76-174 on August 26, 1976, the Corporation has not commenced timber harvesting operations. Its effort to build an access road across BLM lands was enjoined by the United States District Court, Northern District of California.^{3/} Inasmuch as the Court's most recent injunction will expire on April 15, 1977, concern was expressed at the State Board hearing that road building and timber harvesting would commence before the issues raised by the petitioner could be resolved. At the close of testimony during the hearing on March 29, 1977, this concern was expressed to the Corporation's representative along with an inquiry as to whether the Corporation could promise to undertake no road building or timber harvesting for a specified period. After discussion, the Corporation represented that it would not commence any additional road building on BLM lands related to this timber harvesting operation or commence logging activities within the area encompassed by Order No. 76-174 until on or about May 26, 1977. This promise was predicated upon the

3. Citizen's Committee to Save Our Public Lands v. Thomas Kleppe, Secretary of the Interior, Curtis Berkland, Director, Bureau of Land Management, ... Louisiana-Pacific Corporation, et. al.
No. C-76-32-SC.

expectation that the State Board would adopt this Order on or about April 21, 1977, and that the Regional Board would reconsider Order No. 76-174 on or about May 26, 1977. Specifically excepted from the Corporation's promise was any road construction activities on the existing road on BLM land which are necessary to prevent violation of Order No. 76-174.

In any event, the Regional Board Order (Provision 7, set forth above) prohibits commence^{ment} of operations by the Company prior to submittal to and approval by the Regional Board of specified reports which have only been partially submitted to and have not been approved by the Regional Board.

V. CONCLUSION AND ORDER

The Regional Board's action in adopting waste discharge requirements which do not apply to the drainage of the North Fork Eel River was inappropriate and improper and, further, additional information has now become available which should be considered by the Regional Board in connection with the requirements in question.

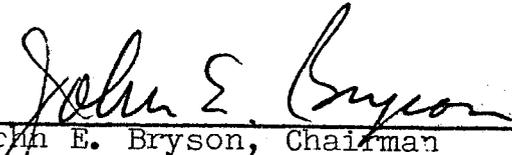
NOW THEREFORE IT IS ORDERED that Order No. 76-174 is remanded to the Regional Board for reconsideration consistent with the above findings.

Dated: April 21, 1977

We Concur:



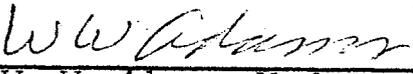
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